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**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON, D.C. 20554**



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| In the Matter of | ) | |
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| Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 | ) | CC Docket No. 96-98 |
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To: The Commission

# COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

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## SUMMARY

If the Commission delegates any authority over numbering administration to the states, it must provide the states with specific guidance on certain issues. In particular, the Commission should prohibit service-specific area code overlays and should require central office code assignments to be made on terms and conditions that do not discriminate against wireless carriers. It is equally important for the Commission to retain jurisdiction to review state numbering decisions.

The Commission should prohibit service-specific overlays because they discriminate against wireless providers and other telecommunications carriers relegated to the new area code. The disparate competitive impact of service-specific overlays on the affected services must not be tolerated.

The Commission also should require equitable central office code assignments. Wireless providers have long been the subject of discriminatory central office code assignment policies, and the potential for such discrimination remains. Explicit rules requiring all services to be treated alike will help ensure that this problem does not recur.

Finally, the Commission must retain the power to review and correct state numbering administration decisions that deviate from its national policies. Without the possibility of review, states will be able to ignore the Commission's numbering policies, to the detriment of competition and contrary to the intent of Section 251(e). Commission review also should be swift because timely action often is crucial in numbering matters.

## TABLE OF CONTENTS

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| | | |
|---|---|---|
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## COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits its comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-referenced proceeding.[1/] These comments address issues relating to numbering administration and dialing parity requirements under new Section 251(b) of the Communications Act.[2/]

## I. INTRODUCTION

Vanguard is a long-time provider of cellular service, and currently serves more than 400,000 customers. Vanguard entered the cellular marketplace in 1984 and now is one of the 20 largest cellular carriers in the country. Vanguard's cellular systems serve 28 markets in the eastern half of the United States and cover a geographic area containing more than 7.5 million people.

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1/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *Notice of Proposed Rulemaking*, CC Docket No. 96-86, rel. Apr. 19, 1996 (the "*Notice*").

2/ The *Notice* set a comment date of May 20, 1996 for these and certain other issues. *See Notice* at ¶ 290. Consequently, these comments are timely filed.

Vanguard has been an active participant in the Commission's recent proceedings to implement the Telecommunications Act of 1996.[3/] The Company has participated in many of the Commission's rulemakings and, most recently, filed comments in response to the other portions of the *Notice*.[4/]

In these comments, Vanguard responds to the portions of the *Notice* concerning numbering-related issues and, particularly, the Commission's tentative conclusion that certain numbering administration duties should be delegated to the states. Vanguard does not dispute this tentative conclusion, but it is important for the Commission to define the parameters under which the states operate and to retain its own authority to review state actions. These actions are essential if the national character of the North American Numbering Plan is to be maintained.

## II. THE COMMISSION SHOULD PROVIDE SPECIFIC GUIDANCE REGARDING THOSE NUMBERING ADMINISTRATION DUTIES THAT ARE DELEGATED TO THE STATES. [*Notice* Parts II(C)(3), II(E)(2), ¶¶ 202-219, 254-258].

*Key points:*

- The Commission should provide specific guidance on certain issues if it delegates elements of its numbering jurisdiction to the states.

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3/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (the "1996 Act").

4/ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, Comments of Vanguard Cellular Systems, Inc. (filed May 16, 1996) (the "Vanguard May 16 Comments"). *See also Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services*, CC Docket No. 96-21, Comments of Vanguard Cellular Systems, Inc. (filed March 13, 1996); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Vanguard Cellular Systems, Inc. (filed April 12, 1996); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Comments of Vanguard Cellular Systems, Inc. (filed April 19, 1996).

- The Commission should prohibit service-specific area code overlays.
- The Commission should require all central office code assignments to be made on terms and conditions that do not distinguish among the types of carriers receiving the codes.

The *Notice* proposes to "delegate matters involving the implementation of new area codes, such as the determination of area code boundaries, to the state commissions so long as they act consistently with [the Commission's] numbering administration guidelines." *Notice* at ¶ 256. It proposes to delegate some portion of the administration of central office codes to the states as well. *Id.* at 258. At the same time, the Commission tentatively concludes that it should "retain its authority to set policy with respect to all facets of numbering administration[.]" *Id.* at 254. Vanguard does not disagree with the Commission's general approach, but believes it is important for the Commission to provide the states with specific guidance as to the limits of any delegated authority. If the Commission does not provide this guidance, it is likely the states will not manage numbering resources in accordance with the Commission's overall national policies.[5/]

As Vanguard described in its comments in the first phase of this proceeding, strong national policies are crucial to the long-term growth of the telecommunications marketplace.[6/] Nowhere is this more true than in the case of numbering administration. One strength of the North American Numbering Plan (the "NANP") is that it has maintained a consistent set of

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5/ It also is likely that the states will have a role in enforcing dialing parity requirements, which are closely related to telephone numbering issues. Vanguard believes that current dialing policies, which generally base the number of digits dialed on the relative locations of the switches of the caller and the called party, are reasonable. The Commission should endorse these policies and should prohibit changes in dialing plans that require callers to dial different numbers of digits depending on the service provider or the specific service used by the party receiving the call. Such a rule also would have an impact on area code relief plans, as described below.

6/ *See* Vanguard May 16 Comments at 1-4.

policies that govern all telephone numbering in the United States (and, for that matter, in the other member countries of the NANP). Congress recognized the importance of national numbering policies when it adopted Section 251(e), which removes any doubt regarding the Commission's plenary authority over telephone numbering.[7/]

Delegating duties of numbering administration to the states without providing guidance creates a risk that the states will adopt inconsistent numbering policies, to the detriment of consumers and competitors in the telecommunications marketplace.[8/] The best way to prevent the development of inconsistent policies is to provide clear guidance to the states regarding the actions they may and may not take. Because the current policy guidance on numbering issues may not be sufficient, the Commission should adopt specific rules that prevent discrimination in area code relief planning and assignment of central office codes.

Specific Commission guidance is especially important to wireless providers because they have been the subject of attempted discrimination, both historically and in recent times. Some of the Commission's first decisions concerning telephone numbering issues involved the efforts of landline carriers to prevent cellular carriers from obtaining sufficient quantities

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7/ 47 U.S.C. § 251(e). It could be argued, in fact, that the adoption of Section 251(e) was a direct response to the Commission's conclusion in the *Ameritech Order* that it did not necessarily have plenary authority over telephone numbering. *See Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois,* Declaratory Ruling and Order, 10 FCC Rcd 4596, 4600 n. 18 (1995) (the *"Ameritech Order"*) (*recon. pending*).

8/ Avoiding risks to consumers is particularly important because one of the most important features of the NANP is that it is well-understood by consumers. As the difficulties caused by the introduction of "interchangeable" area codes illustrated, any inconsistency in or local modification to the NANP can have significant impacts on consumers across the country. *See* "N. American Numbering Plan Manager Sees Companies 'In Denial' on Changes," COMM. DAILY, Jan. 24, 1996 at 6.

of telephone numbers.[9/] More recently, wireless providers have been subjected to discriminatory area code relief plans that would have segregated wireless customers into their own "overlay" area codes and required wireless customers to change both their area codes and their central office codes while landline customers continued with their current numbers.[10/] While such plans have to date been rejected, wireless carriers, state regulators and the Commission have been forced to expend significant resources in the process. Moreover, despite the efforts of wireless carriers and the Commission, attempts to impose service-specific overlays and other discriminatory area code relief "solutions" persist.[11/] These attempts are part of a general trend of incumbent local exchange carriers seeking to impose overlays in the area code relief process whenever they can.[12/]

To avoid repetition of this pattern of discrimination, the Commission should adopt specific requirements for state administration of area code relief and central office code assignment. First, it should prohibit the use of service-specific area code overlays. As the

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9/ *See, e.g., The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services,* Declaratory Ruling, 2 FCC Rcd 2910 (1987) (the *"Cellular Interconnection Order"*) (cellular carriers entitled to "reasonable accommodation" for requests for central office codes), *affirmed* 4 FCC Rcd 2369 (1989).

10/ *See Ameritech Order,* 10 FCC Rcd at 4608; *see also* Petition for Declaratory Ruling of Teleport Communications Group, Inc., IAD File No. 94-104, filed Dec. 5, 1996 (the "Teleport Petition") (describing "take back" elements of proposed Pacific Bell area code relief plan for the 310 area code).

11/ "Texas PUC Orders Area Code Splits," STATE TEL. REG. REP., Mar. 7, 1996.

12/ For instance, Bell Atlantic is poised to implement two overlays at once in Maryland, over the protests of its new competitors. In California, Pacific Bell has proposed overlays as the relief method in the planning process for every single area code exhaust that has been considered since planning for the 310 area code began in 1993, a total of at least seven area codes. Pacific Bell's original proposal for the 310 area code would have required wireless carriers to return central office codes in the 310 area code and to obtain new ones from the overlay code. *See* Teleport Petition at 4.

Commission described in the *Ameritech Order*, service-specific overlays discriminate against the affected services, providing a significant competitive advantage for the services that are not forced into the overlay.[13/] A specific Commission requirement is necessary, however, because the Commission has never stated that service-specific overlays are unlawful.[14/] Without a direct Commission statement, it is likely that one or more states will attempt, as has been suggested in Texas, to implement service-specific overlays in the future.

The Commission also should adopt requirements that prevent states from authorizing discrimination in assignment of central office codes. As the *Cellular Interconnection Order* attests, discrimination against wireless carriers has been one of the enduring numbering issues of the last fifteen years. These problems persist, and proposals to limit the ability of wireless carriers to obtain central office codes, such as those struck down in the *Ameritech Order,* surface again and again, especially when landline carriers blame wireless carriers for the exhaustion of area codes. Moreover, discrimination against wireless carriers has real impacts in the form of higher costs and delays in providing service to wireless customers. The solution to these problems is for the Commission to require all central office code assignments to be made on terms and conditions that do not distinguish among the types

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13/ *Ameritech Order,* 10 FCC Rcd at 4608. In addition, implementation of service-specific area code overlays would violate dialing parity requirements because customers of the unaffected carriers would have to dial extra digits to reach customers of the carriers forced into the overlay. *See* 47 U.S.C. § 251(b)(3); *supra* note 5. Many of these concerns could apply equally to non-service-specific overlays unless certain conditions, such as the availability of permanent number portability, are met.

14/ While the *Ameritech Order* may appear to have the effect of prohibiting such overlays, it does not do so directly. Rather, it addresses the specific plan proposed by Ameritech and holds that, in the context of the specific facts of the request for a declaratory ruling, Ameritech's relief plan, taken as a whole, is unlawful. *See Ameritech Order,* 10 FCC Rcd at 4608, 4611 (finding that specific elements of proposal are unlawful in light of the facts). Moreover, the *Ameritech Order* is subject to a pending reconsideration request.

of carriers receiving the codes. Such a requirement would be consistent with the telephone industry's existing Central Office Code Assignment Guidelines and with the principles the Commission adopted nine years ago in the *Cellular Interconnection Order.*

## III. THE COMMISSION SHOULD RETAIN THE AUTHORITY TO REVIEW STATE ACTIONS CONCERNING AREA CODE RELIEF AND OTHER NUMBERING MATTERS. [*Notice* Part III(E)(2), ¶¶ 254-258].

*Key points:*

- Review of state actions is necessary to preserve the consistency of national policy.
- The Commission has the authority to review state numbering determinations.
- Swift action is necessary on numbering matters because they often are time-sensitive.

Adoption of rules to govern any authority the Commission delegates to the states is not enough by itself. The Commission also must retain the authority to review state actions in those areas where authority is delegated. Unless the Commission retains the final say on numbering matters, it is likely that its national numbering policies will be undermined by state actions.

First, the Commission should recognize that there is resistance to the Commission's authority over numbering matters. Even the policy framework adopted by the Commission in the *Ameritech Order* has not been applied consistently by the states. Some states have reached results that are consistent with the *Ameritech Order,* but without relying on (or conceding the validity) of the Commission's authority [15/] In other states, such as Texas,

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15/ See AirTouch Communications and MCI Telecommunications Corp. v. Pacific Bell, Case Nos. 94-09-058 and 95-01-001, Cal. Pub. Util. Comm'n, Decision No. 95-08-052, Aug. 11, 1995 ("California 310 Order").

there have been suggestions that the Commission's policies should be ignored.[16/] Thus, without Commission oversight, it is likely that the states' natural tendency to find their own paths will result in inconsistent policies.

Commission review of state actions, therefore, is vital to ensuring that the Commission's national policy goals are met. The Commission's power to review state actions is confirmed by Section 251(e), which gives the Commission both plenary authority over numbering and the power to determine what functions it will delegate. 47 U.S.C. § 251(e). Given the Commission's ultimate authority over numbering, it would be unreasonable to conclude that the Commission cannot review state actions on numbering matters.[17/] Indeed, the Commission should go further If the Commission is presented with evidence that a state repeatedly has taken actions contrary to the Commission's national policy goals, the Commission should divest that state of authority over numbering issues, either permanently or for a five-year period.

It also is important for the Commission to act swiftly. Denials of numbering resources literally prevent carriers from serving their customers, because without numbers there is no way to provide service. Area code matters also require swift action because they are time sensitive. Indeed, at least one local exchange carrier has argued that regulators had

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16/ *See* "Texas PUC Orders Area Code Splits," STATE TEL. REG. REP., Mar. 7, 1996; *see also* Albert R. Karr, Texas Defies Washington in Phone Deregulation, Protecting Its Local Bell Against Giant Rivals, WALL ST. J., May 2, 1996 at A16.

17/ *See, e.g., Appalachian Regional Healthcare, Inc. v. U.S.,* 999 F.2d 1573 (Fed. Cir. 1993) (describing Medicare appeals process). The Commission's delegation of its power to the states also could be viewed as an extension of its authority to delegate power under Section 8(c) of the Communications Act. 47 U.S.C. § 158(c). Any action taken by delegated authority under Section 8(c) is subject to petitions for review to the full Commission and it is reasonable to apply the same principle to authority delegated under Section 251(e). *See* 47 U.S.C. § 158(c)(4).

to adopt its preferred area code relief plan because there was no time to do anything else.[18/] If the Commission does not commit to prompt responses to numbering matters, it is likely that time really will run out, either for a carrier that cannot serve its customers or for a particular area code relief option, when swift Commission action could have been decisive.

## VIII. CONCLUSION

For all of these reasons, Vanguard Cellular Systems, Inc. respectfully requests that the Commission adopt rules in accordance with these comments.

Respectfully submitted,

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May 20, 1996

18/ See California 310 Order at 31

## CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 20th day of May, 1996, I caused copies of the foregoing "Comments of Vanguard Cellular Systems, Inc." to be served via hand-delivery, to the following:

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